



IA. No. 695/KB/2025

IN THE NATIONAL COMPANY LAW TRIBUNAL KOLKATA BENCH-II KOLKATA  
(BEFORE LABH SINGH, MEMBER (JUDICIAL) AND REKHA K SHAH, MEMBER  
(TECHNICAL))

IA. No. 695/KB/2025

In

C.P. (IB) No.342/KB/2022

Date of Order: 08/08/2025

In the Matter of:

Desana Impex Limited  
A Company incorporated under the  
Companies Act 2013 having its  
Registered office at 13, Pollock  
Street, 2<sup>nd</sup> Floor, Kolkata-700001  
West Bengal

APPLICANT/FINANCIAL CREDITOR

Versus

Brick and Motor Realty Pvt Ltd.,  
A Company incorporated under the  
Companies Act 2013 having its  
Registered office at 53, Justice  
Madhav Chandra Road,  
Kolkata-700001  
West Bengal

And

Chandra Kumar Jain, Resolution Professional,  
Having registration No. IBBI/IPA-001/  
IP-P00214/2017-18/10414 having office  
At 18, Rabindra Sarani, Poddar Court,

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Gate No. 1, 8<sup>th</sup> Floor, Room No. 816,  
Kolkata-700001

IA. No. 695/KB/2025

CORPORATE DEBTOR

Coram: **Labh Singh, Hon'ble Member(Judicial)**  
**Rekha Kantilal Shah, Hon'ble Member(Technical)**

Present:

For Financial Creditor : Ms.Rashhmi Singhee,Adv.  
For Corporate Debtor : Mr.Mahasmriti Ghosh, Adv.  
For the applicant(s) : Ms. Manju Bhuteria Ld. Sr. Advocate  
Ms. Joveria Sabbah, Ld. Advocate  
Mr.Chandan Kr.Jain,RP  
For BoD : Mr.Saurav Jain, Adv.

ORDER

**Labh Singh Member(Judicial)**

1. The present application has been filed under Section 12-A of the Insolvency and Bankruptcy Code 2016 with prayer to allow the Financial Creditor to withdraw the CIRP proceedings initiated by filing CP(IB) No. 341/KB/2022 against the Corporate Debtor in light of settlement agreement dated 02<sup>nd</sup> April 2025.
2. Briefly stated the facts of the present case are that the Financial Creditor filed an Application bearing CP(IB) No. 342/KB/2022 under Section 7 of the IBC Code 2016 for initiating CIRP process against the Corporate Debtor. The Tribunal, vide order dated 21<sup>st</sup> November 2023, dismissed the

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**IA. No. 695/KB/2025**

application for which an appeal was filed before Hon'ble NCLAT New Delhi. Hon'ble NCLAT, vide order dated 18<sup>th</sup> December 2024, set aside the order dated 21<sup>st</sup> November 2024 while upholding holding the loan transaction as debt under Section 5(8) of the IBC, and the Petition was not barred by limitation.

3. Thereafter, this Tribunal admitted Section 7 application vide order dated 18<sup>th</sup> February 2025, and the CIRP was initiated against the Corporate Debtor. The Applicant was appointed as interim Resolution Professional who was subsequently confirmed as Resolution Professional to carry out the CIRP process of the Corporate Debtor.
4. During pendency of the present proceedings, on 2<sup>nd</sup> April 2025, the Applicant and the suspended directors of Corporate Debtor mutually agreed to settle the financial disputes that had led to initiation of the CIRP process. The parties executed settlement agreement wherein the corporate debtor undertook to settle the dues and the Financial Creditor agreed to withdraw the CIRP process as per terms and condition of the settlement agreement.
5. Thereafter on 21<sup>st</sup> April 2025, the Committee of Creditors, during its 3<sup>rd</sup> meeting with majority of 97.10% voting, accorded its approval for withdrawal of CIRP process initiated against the Corporate Debtor in terms of Section 12-A of the IBC Code 2016.

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IA. No. 695/KB/2025

6. Therefore, in view of settlement agreement entered between the Financial Creditor and the Corporate Debtor on 2<sup>nd</sup> April 2025 whereby both parties have mutually resolved the outstanding financial disputes which led to the initiation of the CIRP process, and further, in view of the approval granted by the Committee of Creditors in its 3<sup>rd</sup> meeting held on 21<sup>st</sup> April, 2025, with 97.10% voting share for withdrawal of CIRP process, the applicant has sought permission of this Tribunal for withdrawal of CIRP process.
7. We have gone through the case file carefully and perused the entire record of the present case and heard Learned Sr. Counsel for the applicant. We have duly appreciated the law applicable to the facts and circumstances of the present application.
8. It would be pertinent to refer relevant provision of Section 12-A of the IBC Code 2016 which read as follow:
- "12A. Withdrawal of application admitted under section 7, 9 or 10.—The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors, in such manner as may be specified".*
9. Thus, as per Section 12-A of the IBC Code 2016, the withdrawal of an admitted application under Section 7 or 9 or 10 is

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IA. No. 695/KB/2025

permissible subject to approval of the Committee of Creditor having majority voting share of 90%.

10. In the instant case, the Committee of Creditor, in its 3<sup>rd</sup> meeting has approved for withdrawal of resolution process against the corporate debtor with majority voting share of 97.10% which satisfy the criteria laid down in Section 12 of the IBC Code 2016. The dissenting creditor is having only 2.90% voting share who has rejected the said settlement.

11. Learned Sr. Counsel for the applicant relied upon judgment passed by Hon'ble Apex Court in case of Vallal RCK Versus M/s Siva Industries and Holding Limited and Others 2022 SCC OnLine SC 717 wherein Hon'ble Apex Court held that:

"23. As already stated hereinabove, the provisions under Section 12A of the IBC have been made more stringent as compared to Section 30(4) of the IBC. Whereas under Section 30(4) of the IBC, the voting share of CoC for approving the Resolution Plan is 66%, the requirement under Section 12A of the IBC for withdrawal of CIRP is 90%.

24. When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, in our view, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the

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IA. No. 695/KB/2025  
 appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provision of the Statute and the Rules”.

12. It would also be relevant to refer provision of Regulation 30A of the IBBI(CIRP) Regulation 2016 which came into effect on 25<sup>th</sup> July 2019 which read as follow:

“30A. Withdrawal of application:

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority -

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule-I accompanied by a bank guarantee-

(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1); or

(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of

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IA. No. 695/KB/2025

filing of the application under clause (b) of sub-regulation (1).

(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

(4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.

(5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

(6) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (3) or (5).

(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.”

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IA. No. 695/KB/2025

13. Thus, after an application under Section 7, 9 or 10 is admitted, the CoC has been constituted and the invitation for expression of interest has not been issued, the application for withdrawal is to be placed before the NCLT, through the Interim Resolution Professional or the Resolution Professional as the case may be. The application is first placed before the CoC and after ascertaining approval with a ninety percent voting share, the Resolution Professional shall submit the application to the Adjudicating Authority i.e NCLT.
14. In the instant case, the invitation of expression of interest has not been issued rather it has been rejected by the CoC with 100% voting. The withdrawal of CIRP process has been approved by the CoC in its 3<sup>rd</sup> meeting with 97.10% voting share. The bank guarantee as per requirement of Rule 3 of Regulation 30A is not required as the entire payment of the Financial Creditor and costs have been satisfied. Thus, there is compliance of mandatory provision of Section 12-A of the IBC Code 2016 and Rule 30A of IBBI(CIRP) Process Regulation 2016 as amended in the year 2019.
15. Therefore, in view of the above, the present application stands allowed and the CIRP process is hereby withdrawn. The Company petition no. 342/KB/2022 stands dismissed as withdrawn with no order as to costs.
16. Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, Resolution

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IA. No. 695/KB/2025  
Professional and the Registrar of Companies, State of West  
Bengal at the earliest possible but not later than three days  
from today.

Rekha Kantilal Shah  
Member(Technical)

Labh Singh  
Member(Judicial)



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**COMPARED & VERIFIED**

*Ry*

12/8/25

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Copying 5/-  
Registration -  
Total ₹ 60/-  
Date of Receipt &  
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